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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,349

01/13/2005

John A. Gelardi

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1964

38235 7590 03/25/2008
MEADWESTVACO CORPORATION
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EXAMINER

BUI, LUAN KIM

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

03/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,349	Applicant(s) GELARDI ET AL.	
	Examiner Luan K. Bui	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/4/08 & 2/19/08</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election of Group III, claims 20-38 in the reply filed on 2/4/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 20-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 20, the phrase "a base portion dimensioned and configured to extend into the sleeve and a peripheral wall extending upwardly from the base portion and having an outwardly extending rim adapted to abut the peripheral edge of the opening" is inaccurate and indefinite because the drawings fail to show the base portion extends into the sleeve and the peripheral wall extending outwardly from the base portion and having an outwardly extending rim. The phrases "a location below the rim of the peripheral wall of the end cap" in claim 29 and "...below the rim of the peripheral wall of the second end cap" in claim 37 are inaccurate and indefinite because the drawings fails to show the shaped cavity extends upwardly from the base portion to a location below the rim of the peripheral wall.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the base portion extends into the sleeve and the peripheral wall extending outwardly from the base portion and having an outwardly extending rim and the shaped cavity extends upwardly from the base portion to a location below the rim of the peripheral wall must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Information Disclosure Statement

5. The information disclosure statement filed on 2/4/2008 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent documents. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

6. The disclosure is objected to because of the following informalities: the specification filed on 1/13/2005 fails to include the brief description of Figures 1-14. Appropriate correction is required.

7. If applicant desires priority under 35 U.S.C. 119(e) based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph. For example, "This application claims the benefit of U.S. Provisional application Serial No. 60/xxxxxx, filed xxxxxx."

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claims 20-26 are rejected under 35 U.S.C. 102(b) as being anticipated by The Photographs of Lindt & Sprungli chocolate package (hereinafter Lindt & Sprungli). To the extent that the Examiner can determine the scope of the claims, Lindt & Sprungli discloses a product container comprising an elongated sleeve (pages 1-2) defining an opening at one end, the opening defined by a peripheral edge and the sleeve including a pair of opposed resilient locking tabs extending from the peripheral edge of the opening and an end cap (pages 3-5) adapted and configured for reception within the opening of the sleeve. The end cap having a base portion dimensioned and configured to extend into the sleeve and a peripheral wall extending upwardly from the base portion and having an outwardly extending rim adapted to abut the peripheral edge of the opening to limit the extent to which the base portion can extend into the sleeve. The opposed resilient locking tabs are dimensioned and configured to releasably engage the peripheral wall of the end cap to prevent removal of the end cap from the sleeve.

10. Claims 20-22 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated The Great Britain Patent No. 2 349 143 to Brain. To the extent that the Examiner can determine the scope of the claims, Brain discloses a product container comprising an elongated sleeve (14) defining an opening at one end, the opening defined by a peripheral edge and the sleeve including a pair of opposed resilient locking tabs (42) extending from the peripheral edge of the opening and an end cap (12) adapted and configured for reception within the opening of the sleeve. The end cap having a base portion (52) dimensioned and configured to extend into the sleeve and a peripheral wall extending upwardly from the base portion and having an outwardly extending rim (54, 56) adapted to abut the peripheral edge of the opening to limit the extent to

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which the base portion can extend into the sleeve. The opposed resilient locking tabs are dimensioned and configured to releasably engage the peripheral wall of the end cap to prevent removal of the end cap from the sleeve.

As to claims 27-30, Brain further discloses the base portion of the end cap includes a shaped cavity (defined by the base portion 52 and a cylindrical section 50) for accommodating a product (such as a bottle or the like, page 4, second paragraph) displayed within the container.

11. Claims 20-29 and 31-37 are rejected under 35 U.S.C. 102(b) as being anticipated Troth (3,941,300). To the extent that the Examiner can determine the scope of the claims, Troth discloses a product container (10) comprising an elongated sleeve (14) defining an opening at one end, the opening defined by a peripheral edge and the sleeve including a pair of opposed resilient locking tabs (16) extending from the peripheral edge of the opening and an end cap (18) adapted and configured for reception within the opening of the sleeve. The end cap having a base portion (22) dimensioned and configured to extend into the sleeve and a peripheral wall extending upwardly from the base portion and having an outwardly extending rim (Figures 6-7) adapted to abut the peripheral edge of the opening to limit the extent to which the base portion can extend into the sleeve. The opposed resilient locking tabs are dimensioned and configured to releasably engage the peripheral wall of the end cap to prevent removal of the end cap from the sleeve.

As to claim 23, Troth discloses the sleeve defined by opposed first and second curved panels (two interconnected sides are considered equivalent to a curved panel as claimed).

As to claims 24-25, the first and second curved panels are connected/integrally joined to one another along a first lateral edge of the container.

As to claim 26, the first and second curved panels are affixed (12) to one another along a second lateral edge of the container.

As to claims 27-29, Troth further discloses the base portion of the end cap includes a shaped cavity. The shaped cavity of Troth is inherently capable for accommodating a product displayed within the container.

As to claims 31 and 32, Troth further discloses the sleeve includes a second opening at a second end and a second end cap (18) adapted and configured for reception within the second opening of the sleeve (Figure 1).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 30 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Troth (3,941,300) in view of The Great Britain Patent No. 2 349 143 to Brain. Troth discloses the product container as above having all the limitations of the claims except for the shaped cavity has a generally circular cross section.

Brain shows a product container comprising an elongated sleeve (14) and an end cap (12) having a shaped cavity (defined by the base portion 52 and a cylindrical section 50) for accommodating

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a product (such as a bottle or the like, page 4, second paragraph) displayed within the container and the shaped cavity comprises a generally circular cross section. It would have been obvious to one having ordinary skill in the art in view of Brain to modify the shaped cavity of Troth so the shaped cavity comprises a generally circular cross-section for better accommodating and retaining a generally cylindrical product.

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 20-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 7,000,775. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structural limitations in the claims of the instant patent application are fully disclosed and claimed by the patents.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb
March 24, 2008

/Luan K. Bui/
Primary Examiner
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